

Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 45 CFR Parts 160 and 164 (“HIPAA Privacy Rule”) Provisions:

Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, known as the “Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy Rule”).

The Department for Mental Health and Mental Retardation Services (DMHMRS) is a Covered Entity (hereafter “CE”) and the Contractor is a Business Associate (hereafter “BA”) under the HIPAA Privacy Rule.

BA may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under this Agreement;

Any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule.

The term “Protected Health Information” (hereafter “PHI”) means individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

BA acknowledges and agrees that all PHI that is created or received by CE and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display by CE or its operating units to BA or is created or received by BA on CE’s behalf shall be subject to this Agreement.

I. CONFIDENTIALITY REQUIREMENTS

(A) BA agrees:

- (i) to use or disclose any PHI solely (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom

- CE is required to disclose such information or as otherwise is permitted under this Agreement, or the HIPAA Privacy Rule;
- (ii) at termination of this Agreement, (or any similar documentation of the business relationship of the Parties, or upon request of CE, whichever occurs first, if feasible, BA will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and
 - (iii) to ensure that its agents, including a subcontractor, to whom it provides PHI received from or created by BA on behalf of CE, agrees to the same restrictions and conditions that apply to BA with respect to such information. In addition, BA agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause BA to breach the terms of this Agreement.
- (B) Notwithstanding the prohibitions set forth in this Agreement, BA may use and disclose PHI as follows:
- (i) if necessary, for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided that as to any such disclosure, the following requirements are met:
 - (a) the disclosure is required by law; or
 - (b) BA obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies BA of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (ii) for data aggregation services, if to be provided by BA for the health care operations of CE pursuant to any agreements between the Parties evidencing their business relationship. For purposes of the Agreement, data aggregation services means the combining of PHI by BA with the PHI received by BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities.
- (C) BA will implement appropriate safeguards to prevent use or disclosure of PHI other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit BA's records and practices related to use and disclosure of PHI to ensure CE's compliance with the terms of the HIPAA Privacy Rule. BA shall report to CE any use or disclosure of PHI which is not in compliance with the terms of this Agreement of which it becomes aware.

II. AVAILABILITY OF PHI

BA agrees to make available PHI to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. BA agrees to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, BA agrees to make PHI available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

III. TERMINATION

Notwithstanding anything in this Agreement to the contrary, CE shall have the right to terminate this Agreement immediately if CE determines that BA has violated any material term of this Agreement. If CE reasonably believes that BA will violate a material term of this Agreement and, where practicable, CE gives written notice to BA of such belief within a reasonable time after forming such belief, and BA fails to provide adequate written assurances to CE that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then CE shall have the right to terminate this Agreement immediately.

IV. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the Parties to this Agreement do not intend to create any rights in any third parties. The obligations of BA under the Section shall survive the expiration, termination or cancellation of this Agreement, and/or business relationship of the Parties, and shall continue to bind BA, its agents, employees, contractors, successors and assigns as set forth herein.

This Agreement may be amended or modified only in writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the Commonwealth of Kentucky. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which BA provides services to CE contains provisions relating to the use or disclosure of PHI, which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are

intended to establish the minimum requirements regarding BA's use and disclosure of PHI.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty (30) days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty (30) day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.